Toffoloni v. LFP Publishing Group, LLC

Doc. 73 Att. 12

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF GEORGIA**

| | | |
|---|---|---|
| **MAUREEN TOFFOLONI,** | ) | |
| as Administrator and Personal | ) | |
| Representative of the ESTATE | ) | |
| OF NANCY E. BENOIT, | ) | |
| | ) | CASE NO. 1:08-cv-00421-TWT |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | |
| | ) | |
| **LFP PUBLISHING GROUP, LLC,** | ) | |
| d/b/a Hustler Magazine, et al, | ) | |
| | ) | |
| Defendant. | ) | |

**BRIEF IN SUPPORT OF DEFENDANT'S MOTION**
**FOR PROTECTIVE ORDER**

EXHIBIT K

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January 30, 2008

VIA TELEFAX (404) 577-9149
AND U.S. MAIL

Richard P. Decker, Esq.
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260 Peachtree Street, N.W.
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Re: Photos of Nancy Toffoloni Benoit

Dear Mr. Decker:

This will respond to your letter to me of January 29, 2008. In your letter, you indicate that you will be filing suit on behalf of the Estate of Nancy Toffoloni Benoit against *Hustler Magazine* and its related entities, because it intends to publish photographs of the late Ms. Benoit without permission of the Administrator of her Estate (her mother).

I have been notified by *Hustler* that the subject nude photographs of the late Ms. Benoit, which were voluntarily posed by her for intended publication in another adult magazine, were in fact published by *Hustler Magazine* in its March, 2008 issue. The "on-sale date" for that issue was January 8, 2008! Accordingly, the subject photos of Ms. Benoit have been available for purchase by the public via *Hustler Magazine* at thousands of retail outlets throughout the country for more than three weeks. The regular "off-sale date" for the Magazine at retail outlets will be February 4, 2008. The next day, February 5th, the April, 2008 edition of *Hustler Magazine* will become available for retail sale to the public.

By reason of the foregoing, we advise that any attempt by your client to seek preliminary injunctive relief – much less a temporary restraining order – in this matter would be futile. *Hustler Magazine* has already published the subject photos of Nancy Benoit, and there is no further action for it to take that may be enjoined to prevent such publication. Moreover, unsold copies of the Magazine will be removed from retail outlets in the normal course of business on February 4, 2008 – a mere five days from now.

If, as you state, your client wishes to commence a lawsuit over this matter, we will accept service of a Summons and Complaint at our office on behalf of *Hustler Magazine's* publishing entity, LFP Publishing Group, LLC, a California limited liability company. However, as previously indicated in my letter to you of January 25, 2008, Nancy Benoit was a well-known public figure and celebrity in the wrestling world. Her murder was a national news story, covered by newspapers, network television and cable news outlets, and the illustrated biographical story on her life and death which appeared in the March, 2008 issue of *Hustler Magazine* was of significant public interest. Accordingly, said news article and the related photographs are protected by the right of free expression and the freedom of the press contained in the First Amendment to the United States Constitution.

Sincerely,

LIPSITZ GREEN SCIME CAMBRIA LLP
Attorneys for LFP Publishing Group, LLC

By:__________________________
Paul J. Cambria, Jr., Esq.

PJC/WMF/lv

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